

# Exhibit 1

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**From:** zzz.External.DHo@aclu.org  
**Sent:** Saturday, September 22, 2018 10:37 PM  
**To:** Bailey, Kate (CIV); Freedman, John A.; Federighi, Carol (CIV); Coyle, Garrett (CIV); Kopplin, Rebecca M. (CIV); Halainen, Daniel J. (CIV); Tomlinson, Martin M. (CIV); Ehrlich, Stephen (CIV); Wells, Carlotta (CIV)  
**Cc:** zzz.External.SBrannon@aclu.org; zzz.External.PGrossman@nyclu.org; Colangelo, Matthew; Bauer, Andrew; Gersch, David P.; Grossi, Peter T.; Weiner, David J.; Young, Dylan Scot; Kelly, Caroline; Saini, Ajay; Goldstein, Elena  
**Subject:** Re: [Not Virus Scanned] [Not Virus Scanned] State of New York v. Department of Commerce, S.D.N.Y 18-CV-2921, outstanding request for focus group materials

Counsel,

Thank you for the clarification. We look forward to receiving witness availability for the conclusion of the 30(b)(6) deposition.

Separately, we note that we previously requested that, at the time you serve your expert disclosures, you also provide us with dates of your experts' availability. Now that you have designated Dr. Abowd as your sole expert, please send us dates for his availability for an expert deposition asap. Given our expert rebuttal deadline of October 1, we request that you provide dates for this coming week, September 26-28. If you do not make him available on one of those dates, it will prejudice our ability to meet the expert rebuttal deadline.

Relatedly, we note that Dr. Abowd's report is not in compliance with Rule 26(a)(2)(B) in that it fails, among other things, to identify the information required under 26(a)(2)(B)(iii), (v), or (vi). If this information is in the report, please identify where it is to be found. If it is not in his report, please explain why this information has not been disclosed

Regards,

Dale Ho  
Director, Voting Rights Project  
American Civil Liberties Union  
125 Broad St., 18th Floor  
New York, NY 10004  
(212) 549-2693  
dale.ho@aclu.org  
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**From:** Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>

**Sent:** Saturday, September 22, 2018 11:05:56 AM

**To:** Dale Ho; Freedman, John A.; Federighi, Carol (CIV); Coyle, Garrett (CIV); Kopplin, Rebecca M. (CIV); Halainen, Daniel J. (CIV); Tomlinson, Martin M. (CIV); Ehrlich, Stephen (CIV); Wells, Carlotta (CIV)

**Cc:** Sarah Brannon; Perry Grossman; Colangelo, Matthew; Bauer, Andrew; Gersch, David P.; Grossi, Peter T.; Weiner, David J.; Young, Dylan Scot; Kelly, Caroline; Saini, Ajay; Goldstein, Elena

**Subject:** Re: [Not Virus Scanned] [Not Virus Scanned] State of New York v. Department of Commerce, S.D.N.Y 18-CV-2921, outstanding request for focus group materials

Counsel,

We will provide availability for Dr. Abowd shortly. But my email below states clearly (and in boldface type), that we will make Dr. Abowd available for two hours total, not two hours plus the 27 minutes Plaintiffs chose to reserve after Defendants agreed to leave the deposition open. Dr. Abowd will be made available as a 30(b)(6) witness for two hours--total.

Kate Bailey

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

**From:** Dale Ho <dho@aclu.org>

**Date:** 9/21/18 8:49 PM (GMT-05:00)

**To:** "Bailey, Kate (CIV)" <katbaile@CIV.USDOJ.GOV>, "Freedman, John A."

<John.Freedman@arnoldporter.com>, "Federighi, Carol (CIV)" <CFederig@CIV.USDOJ.GOV>, "Coyle, Garrett (CIV)" <gcoyle@CIV.USDOJ.GOV>, "Kopplin, Rebecca M. (CIV)" <rkopplin@CIV.USDOJ.GOV>, "Halainen, Daniel J. (CIV)" <dhalaine@CIV.USDOJ.GOV>, "Tomlinson, Martin M. (CIV)" <mtomlins@CIV.USDOJ.GOV>, "Ehrlich, Stephen (CIV)" <sehrlich@CIV.USDOJ.GOV>, "Wells, Carlotta (CIV)" <CWells@CIV.USDOJ.GOV>

**Cc:** Sarah Brannon <sbrannon@aclu.org>, Perry Grossman <PGrossman@nyclu.org>, "Colangelo, Matthew" <Matthew.Colangelo@ag.ny.gov>, "Bauer, Andrew" <Andrew.Bauer@arnoldporter.com>, "Gersch, David P." <David.Gersch@arnoldporter.com>, "Grossi, Peter T." <Peter.Grossi@arnoldporter.com>, "Weiner, David J." <David.Weiner@arnoldporter.com>, "Young, Dylan Scot" <Dylan.Young@arnoldporter.com>, "Kelly, Caroline" <Caroline.Kelly@arnoldporter.com>, "Saini, Ajay" <Ajay.Saini@ag.ny.gov>, "Goldstein, Elena" <Elena.Goldstein@ag.ny.gov>

**Subject:** Re: [Not Virus Scanned] [Not Virus Scanned] State of New York v. Department of Commerce, S.D.N.Y 18-CV-2921, outstanding request for focus group materials

Counsel,

I'm writing back regarding Dr. Abowd's 30(b)(6) deposition; we will be following up separately on the other issues.

As you may recall, the parties agreed on the record that Dr. Abowd's 30(b)(6) deposition remained open - and thus, this is not his "third" deposition, but rather merely a continuation of his first 30(b)(6) deposition. In any event, thank you for agreeing that the continuing portion of the 30(b)(6) deposition will not be limited to a single document.

As to the remaining length of time in his 30(b)(6) deposition, as previously noted, we disagree that the time you have offered is sufficient to question Dr. Abowd adequately about a 77-page technical document, as well as approximately 20 other documents that were available a week prior to his deposition but not produced until after close of business on the eve of his deposition, and other documents that have been produced since his deposition.

Nevertheless, in the interests of resolving this dispute, we agree to your limit of 2 additional hours beyond the ordinary 7-hour limit on depositions for the balance of the 30(b)(6) deposition.

Please confirm dates for Dr. Abowd's availability to complete his 30(b)(6) as soon as possible.

Regards,

Dale Ho  
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American Civil Liberties Union  
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**From:** Bailey, Kate (CIV) <Kate.Bailey@usdoj.gov>

**Sent:** Thursday, September 20, 2018 8:30:25 PM

**To:** Freedman, John A.; Dale Ho; Federighi, Carol (CIV); Coyle, Garrett (CIV); Kopplin, Rebecca M. (CIV); Halainen, Daniel J. (CIV); Tomlinson, Martin M. (CIV); Ehrlich, Stephen (CIV); Wells, Carlotta (CIV)

**Cc:** Sarah Brannon; Perry Grossman; Colangelo, Matthew; Bauer, Andrew; Gersch, David P.; Grossi, Peter T.; Weiner, David J.; Young, Dylan Scot; Kelly, Caroline; Saini, Ajay; Goldstein, Elena

**Subject:** [Not Virus Scanned] [Not Virus Scanned] State of New York v. Department of Commerce, S.D.N.Y 18-CV-2921, outstanding request for focus group materials

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Counsel,

We will obtain and provide you dates for Dr. Abowd's third deposition (second deposition in his capacity as a 30(b)(6) witness) as soon as possible. Regarding your request for additional time to depose him on documents other than the white paper, we repeatedly made clear before providing dates for various witnesses (not only Dr. Abowd) that, due to the extremely broad scope of Plaintiffs' document requests, it would not be possible for Defendants to complete production of all documents potentially relevant to these depositions in the timeframe in which Plaintiffs wished to take those depositions. Because of this, we specifically advised that, should the depositions proceed during the timeframe Plaintiffs requested, we would not make witnesses available multiple times simply because Plaintiffs wished to question individuals about documents that later became available.

Although we maintain this position, in an effort to avoid further disputes, **we agree to make Dr. Abowd available for an additional two hours total**, and that the scope of that deposition may relate to other documents recently produced, rather than only the white paper itself.

We also have several updates regarding your request for documents related to focus group testing:

- Attached to this email is Part One of Six sets of documents we are producing tonight. Most of these materials were provided to you last week, but now includes Bates stamps. We have located and included two additional emails that were not part of last week's materials.
- Below is a list of focus-group-related materials that were submitted to the DRB for Title XIII review and clearance this Monday, September 17<sup>th</sup>. Because no DAO has DRB bypass authority for this type of data, the DRB itself will have to clear each document, and they estimate completing this review between Sept 26<sup>th</sup> – October 1<sup>st</sup>. We will produce cleared material as promptly as possible.
  - The “audience summaries” listed below each summarize transcripts roughly 1100 pages in length, which would not be producible post-DRB in any useable form. I have been advised that the summaries are an attempt by the DRB and census to release as much data as possible. The Census Bureau has an approved protocol for disclosure avoidance review of summaries of qualitative research produced from activities like focus groups. It does not have, and does not anticipate developing, a protocol for disclosure avoidance review of full transcripts. Full transcripts thus have the same data protection as other micro-data products for which the Census Bureau does not have an approved disclosure avoidance protocol. Review of these summaries will be finished by October 1, if not earlier.
  - Raw data from the focus groups is Title XIII-protected material not subject to release but there is, however, a Public Use Microsample file that is created from the Focus Group Surveys, which will be produced.
    - There is a DRB-approved public-use micro-data file from the 2018 CBAMS survey. Census did not anticipate releasing this file for public use prior to the 2020 Census; therefore, there is only limited documentation which has been cleared by the DRB. We are still waiting for a time estimate on this material.
- We have thoroughly searched for, and consider this a complete response to, your request for focus-group testing material. Collection and production of these materials, including DRB disclosure-avoidance review, takes substantial time and must be completed by individuals with significant responsibilities unrelated to this litigation. Specifically, we will not be searching for, or producing, emails relating to this testing, as such material would be overly burdensome and disproportionate with the needs of this case, consistent with our earlier responses and objections to your RFPs.

Materials undergoing review:

## 1. After Action Reports

- a. T13\_2020 CBAMS Focus Group After Action Report - Cayey Spanish Puerto Rico 4-19
- b. T13\_2020 CBAMS Focus Group After Action Report - DET BAA April 12 V.20
- c. T13\_2020 CBAMS Focus Group After Action Report - DET MENA April 11\_v2.0
- d. T13\_2020 CBAMS Focus Group After Action Report - Honolulu NHPI April 9

- e. T13\_2020 CBAMS Focus Group After Action Report - LA Chinese [April 3](#)
- f. T13\_2020 CBAMS Focus Group After Action Report - LA MENA [April 4](#)
- g. T13\_2020 CBAMS Focus Group After Action Report - LA NHPI [April 5](#)
- h. T13\_2020 CBAMS Focus Group After Action Report - LA Spanish [April 3](#)
- i. T13\_2020 CBAMS Focus Group After Action Report - Montgomery BAA [April 16](#)
- j. T13\_2020 CBAMS Focus Group After Action Report - NYC Spanish 3.27.18
- k. T13\_2020 CBAMS Focus Group After Action Report - San Juan PR - Spanish - [April 18](#)
- l. T13\_2020 CBAMS Focus Group After Action Report - Vietnamese 3.19.18
- m. T13\_2020 CBAMS Focus Group After Action Report\_ABQ AIAN [March 14](#)
- n. T13\_2020 CBAMS Focus Group After Action Report\_ABQ Low Internet Proficiency [March 15](#)
- o. T13\_2020 CBAMS Focus Group After Action Report\_ANC AIAN [March 28](#)
- p. T13\_2020 CBAMS Focus Group After Action Report\_Bristol\_Rural\_March 22
- q. T13\_2020 CBAMS Focus Group After Action Report\_CHI Young Mobile April 10\_v2.0
- r. T13\_2020 CBAMS Focus Group After Action Report\_HOU Spanish [April 3](#)
- s. T13\_2020 CBAMS Focus Group After Action Report\_HOU Vietnamese [April 4](#)
- t. T13\_2020 CBAMS Focus Group After Action Report\_MEM Low Internet Proficiency [March 20](#)
- u. T13\_2020 CBAMS Focus Group After Action Report\_NYC Chinese [March 20](#)
- v. T13\_2020 CBAMS Focus Group After Action Report\_SD AIAN [March 29](#)

## **2. Audience Summaries**

- a. T13\_2020 CBAMS Focus Group Audience Summary – AIAN
- b. T13\_2020 CBAMS Focus Group Audience Summary – BAA
- c. T13\_2020 CBAMS Focus Group Audience Summary – Chinese
- d. T13\_2020 CBAMS Focus Group Audience Summary - Low Internet Proficiency
- e. T13\_2020 CBAMS Focus Group Audience Summary – MENA
- f. T13\_2020 CBAMS Focus Group Audience Summary – NHPI
- g. T13\_2020 CBAMS Focus Group Audience Summary – Rural
- h. T13\_2020 CBAMS Focus Group Audience Summary - Spanish PR
- i. T13\_2020 CBAMS Focus Group Audience Summary - Spanish US Mainland
- j. T13\_2020 CBAMS Focus Group Audience Summary – Vietnamese
- k. T13\_2020 CBAMS Focus Group Audience Summary - Young & Mobile

Thank you,

**Kate Bailey**

Trial Attorney

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